

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

OCT 20 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

EDWARD MENDIOLA FLEMING,

Defendant - Appellant.

No. 05-10019

D.C. No. CR-04-00022-ARM

FILED
Clerk
District Court

MEMORANDUM*

NOV 23 2005

For The Northern Mariana Islands
By _____
(Deputy Clerk)

Appeal from the United States District Court
for the District of the Northern Mariana Islands
Alex R. Munson, Chief Judge, Presiding

Argued and Submitted October 5, 2005
Saipan, Guam

Before: SCHROEDER, Chief Judge, GOODWIN, Circuit Judge, and GEORGE**,
District Judge.

Edward Fleming was convicted of attempting to smuggle four undocumented aliens to Guam in violation of 8 U.S.C. § 1324(a)(1)(A)(i). While the evidence that he was smuggling aliens is overwhelming, Fleming argues the evidence is insufficient to support

*This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

**The Honorable Lloyd D. George, Senior United States District Judge for the District of Nevada, sitting by designation.

a finding of specific intent to smuggle to a non-designated port. The statute makes it a crime to attempt to assist an alien to enter the United States “at a place other than a designated port of entry.” Id.

The evidence was overwhelming that Fleming was trying to smuggle aliens. The evidence of intent to enter a non-designated port was easily sufficient, if not overwhelming. None of the aliens had entry permits for Guam. The alien passengers had agreed to pay thousands of dollars to get to Guam from the CNMI. There was no evidence to support any inference that defendant intended to bring the aliens to a designated port of entry.

AFFIRMED.

